

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION**

**COMMITTEE ON LABOR AND EMPLOYMENT RELATIONS**

**Call to Order:** By **CHAIRMAN TOM KEATING**, on January 14, 1999 at  
3:00 P.M., in Room 413/415 Capitol.

**ROLL CALL**

**Members Present:**

Sen. Tom Keating, Chairman (R)  
Sen. Fred Thomas, Vice Chairman (R)  
Sen. Sue Bartlett (D)  
Sen. Dale Berry (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Bob Keenan (R)  
Sen. Walter McNutt (R)

**Members Excused:** Sen. Alvin Ellis (R)  
Sen. Bill Wilson (D)

**Members Absent:** None.

**Staff Present:** Gilda Clancy, Committee Secretary  
Eddye McClure, Legislative Branch

**Please Note:** These are summary minutes. Testimony and  
discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 117, SB 118, SB 131,  
1/7/1999  
Executive Action: SB 21, SB 131

**HEARING ON SB 117**

**Sponsor:** **SEN. FRED THOMAS, SD 30, Stevensville**

**Proponents:** Kevin Braun, Department of Labor & Industry  
Jerry Keck, Administrator, Department of Labor & Industry  
Pat Haffey, Commissioner, Department of Labor & Industry  
Bob Brown, Chairman of Governor's Workers' Compensation Regulation Advisory Council  
George Wood, Executive Director, Montana Self-Insurers' Association  
Jacqueline Lenmark, American Insurance Association  
Mark Barry, State Fund  
Mick Robinson, Governor's Office  
Bob Worthington, Montana Municipal Insurance Authority  
Howard Bailey, Montana Schools Group Insurance Authority  
Ray Barnicoat, Montana Association of Counties  
Pam Egan, Governor's Advisory Council

**Opponents:** Al Smith, Montana Trial Lawyers' Association  
Don Judge, AFL-CIO

**Opening Statement by Sponsor:**

SEN. FRED THOMAS, SD 30, Stevensville, explained there is a lot of technical, clean-up items in SB 117 but it is not a housekeeping bill from a standpoint that this bill sets up an agenda for the future funding of the Department of Labor. In essence, the Workers' Compensation program has shown some success in that pay-outs have decreased. Two years ago, the fiscal statement on SB 290 said that in the next biennium there would be a short-fall, which was accurate. In lieu of the impending fiscal situation, the Governor has put together a council to take a look at this. The problem that we have is short-fall of revenue for the coming biennium of approximately \$1M. Recommendations have been established to handle this problem in the form of SB 117. **EXHIBIT(las10a01)** Sen. Thomas informed the Committee there are a lot of amendments to this bill.

***{Tape : 1; Side : A; Approx. Time Counter : 10 - 46}***

**Proponents' Testimony:**

Kevin Braun, Department of Labor & Industry, stated he would like to address the Committee with the more technical aspects of the

funding equation in the bill. It is fairly complicated because of the advent of Citizen's Initiative-75. There are five mechanisms to the bill which have the funding mechanisms built in. Section 3 provides a retroactive fix to a current piece of litigation the Department is facing with the Montana Schools Group over the old assessment methodology. Section 4 raises the cap which was imposed last session from 2.6% to 3.5%. Section 23 is the provision for coordination instructions to account for contingencies created by the CI-75. This provides if the ballot issue is unsuccessful to raise the cap from 2.6% to 3.5%, then Section 4 is void. If CI-75 is ruled unconstitutional, the cap is removed and the amount of funding is determined by the appropriation of the legislature. Section 26 is the retroactive instructions for Section 3. Section 27 of the bill terminates Section 3 as of July 1. **EXHIBIT(las10a02)** If CI-75 is invalidated by the Court, then the cap is 3%. If CI-75 is upheld, the cap at 3% will be placed on the ballot and if passed will be 3%, if it doesn't pass, it will revert back to 2.6%.

**Jerry Keck, Acting Administrator, Employment Relations Division, Department of Labor & Industry,** addressed the funding short-fall they foresee in the Workers' Compensation Regulation function of the Department and how SB 117 will fix that problem.

**EXHIBIT(las10a03)**

**Pat Haffey, Commissioner, Department of Labor & Industry,** encouraged the Committee to support both SB 117 and SB 118. The bill contains housekeeping measures, funding issues and contains, in part, the results of the directive the Labor Committee gave to the Governor and to the Department of Labor & Industry through Senate Bill 290 of the 1997 Session. As part of that directive, the Labor Committee told the Governor to appoint a broad-based representation of all those people who participated in any way in the Workers' Compensation program. The Governor appointed those people to evaluate what the appropriate regulatory functions of the Workers' Compensation System and to determine how those functions should be funded. **EXHIBIT(las10a04)** This is the first time the Workers' Compensation regulatory system has been addressed and evaluated from such broad-based participants. The Advisory Council determined in the end that the functions which were currently being performed by the regulatory program were appropriated and it was determined that those functions should be appropriately funded. Finally, the Advisory Council made a number of recommendations they believed would enhance the regulatory program. Those recommendations would have cost approximately \$300,000 per year and they would have included an

additional six F.T.E. to assume additional responsibilities in this program. She hopes that the Committee will honor the requests of the Advisory Council.

**Bob Brown, Chairman of the Governor's Workers' Compensation Regulation Advisory Council**, the 19-member council represented a broad cross-section of participants, including insurers, claimants, laborers, medical providers, the public and the Department of Labor. The advisory council began its work in October of 1997 and met periodically for almost a year. During that time the council accomplished several things. (1) It reviewed Montana's current Workers' Compensation regulatory system and the systems of other states. (2) It identified the mission and affirmed the goals outlined in the Workers' Compensation Occupational Safety Acts as appropriate goals for regulatory systems that promotes fairness, effectiveness, and efficiency in the Workers' Compensation system. (3) They examined the number of regulatory activities and programs needed to meet the mission of goals and identified what funding mechanisms should be used to support those activities. (4) They made recommendations to the Governor on ways to implement those goals and funding strategies. The council made these recommendations to Governor Racicot on October 16, 1998 and presented him with 27 recommendations for changes to the Workers' Compensation regulatory system. The council not only concluded the present regulatory functions performed by the Department are vital and should be continued to ensure the health of the Workers' Compensation system, but also that those functions should be expanded. Senate Bill 117 contains only one of the recommendations by the council which is to remove the 2.6% cap and ensure adequate funding of the Department's regulatory functions. It does not contain expansion of regulatory functions which were discussed. He encouraged the passage of SB 117.

**George Wood, Executive Secretary, Montana Self-Insureds' Association**, which is the group of employers who self-insure their Workers' Compensation obligation. He is the first of the speakers who have to pay the bill. He stated it is always nice to have a tax that belongs to somebody else, and recommend that tax. With the amendments, the Montana Self-Insureds' Association supports SB 117 and SB 118. He commended the Department and said they worked very closely with them to draft the amendments to the bill and with the financing.

**Jacqueline Lenmark, American Insurance Association**, explained she is the second of those representing the parties who pay this tax.

She represents private insurance companies under Plan 2. How this tax is to be assessed among Plans 1, 2, and 3, is something which was arrived at the last legislative session. Also, the appropriate rate of that tax has been discussed. Last session the rate was passed as 2.6%. The appropriateness of that rate has been studied again in light of the projected revenue short-falls. She supports SB 117 with the proposed amendments. Ms. Lenmark mentioned when the short-falls were identified by the Department there was some independent verification of that information. Plans 2 and 3 contacted the Nation Commission of Compensation Insurance, which is the organization that provides technical assistance to both Plan 2 and Plan 3 for rate-making purposes. It is the organization which collects rate, payment, and loss information and from that provides the assistance in developing the rates which are filed with the Insurance Commissioner. NCCI helped identify a more precise number which led to the agreement they had reached with the Department.

**EXHIBIT (las10a05)** She said the American Insurance Association support the amendments she handed out. One element in the amendments is a 'policyholder surcharge' which will allow the tax which will fund the Department to be shown on the policyholder's statement of premium as a separate identifiable amount. It also protects how that tax is used and calculated for rate-making purposes so that it does not go into rate-base as a double tax against the companies. The amendments are technical, and Ms. Lenmark will offer an explanation of those amendments to the best of her ability. It is identical language to the Subsequent Injury Fund legislation last session with one minor change, which is last session the State Fund was not included as having the ability to show that tax as a policyholder surcharge. The amendments amend both the Subsequent Injury Fund and the administrative assessment to require all companies to show that tax as a policyholder surcharge, so that the procedure is uniform. All three plans agree with these amendments.

**Mark Barry, Montana State Fund,** informed the Committee they are Plan 3 and also pay an assessment. As a supporter of the bill with the amendments, they realize the importance of a regulatory function. They need to maintain the integrity of the Workers' Compensation system. The State Fund supports this bill.

**Mick Robinson, Governor's Office,** stated with the amendments presented with this bill, they do believe the bill provides the means for the Department to maintain a healthy Workers' Compensation system throughout the state. There has been a lot of work between the Department and the insureds in evaluating, identifying and studying the underlying costs of regulation

within the Department and developing the mechanism to adequately fund that particular level of expenditure. They are comfortable with the amendments as presented as allowing the Department to move forward with the intent of the legislature regarding a fairly efficient regulatory system.

**Bob Worthington, Administrator, Montana Municipal Insurance**

**Authority**, which insures 94 cities and town across the State of Montana, was also part of the committee for SB 290. They support SB 117.

**Howard Bailey, Administrator, Montana Schools Group Insurance**

**Program**, stated they are in support of SB 117 with the amendments.

**Ray Barnicoat, Risk Manager, Montana Association of Counties**, said they also support this bill.

**Pam Egan, Governor's Workers' Compensation Regulatory Advisory Council**, supports SB 117. **EXHIBIT**(las10a06)

*{Tape : 1; Side : B; Approx. Time Counter : 44 - 46; Comments : Tape to Side B during Pam Egan's testimony.}*

**Opponents:**

**Al Smith, Montana Trial Lawyers' Association**, stated they understand the administration regulation of the Workers' Compensation system has to continue. They understand the funding mechanism, but they believe we are losing sight of the workers because of reduced benefits. Also, this is a housekeeping bill and Section 13 on page 14 of the bill, which is to add the term, "or mediation". In termination of benefits, the claimant can ask for benefits to be paid during that period of time they are waiting for mediation. This puts the worker between a rock and a hard spot in trying to negotiate fair settlement and adds another period of time that worker will be without benefits. At that time, they have no money for food, their families, etc. This makes more leverage for the insurer to get them to settle for a less fair amount. Section 15 deals with certification of a person with a disability. At the end of lines 28 through 29, it seems that for the workers' benefit, it should read "on the date of employment, re-employment or date of approval of the application". Section 20 on page 17, a new section dealing with confidentiality of records, has thrown up a red flag in that it provides information obtained which should not be open for public

inspection except to public employees, when necessary to allow them to perform their public duties. The definition of public employees is pretty broad and could include the Department of Revenue, the IRS, police, etc. Mr. Smith said his association would like to see this clarified to include only employers for the purpose of Workers' Compensation, and not for any other purpose.

**Don Judge, Montana State AFL-CIO,** explained they are not opposed to the entire bill, but they are opposed to some of the contents of the legislation. They recognize because of the drastic cuts which have been made in benefits to the injured workers across the State of Montana since about 1987, the income based upon a percentage of benefits paid out has dropped accordingly. According to a recent statement by the Governor, the benefits will continue to drop. Therefore, the administrative cost in enforcing the Workers' Compensation laws in the State of Montana will become more difficult without the revenue needed to make that happen. He is concerned the bill drafters are not asking for a sufficient amount to make that happen. If this has to be submitted to the voters in accordance to CI-75, we will have to go back to the voters again in a couple years because the benefit levels will continue to drop and as long as CI-75 stands we will have to try to raise taxes again. They believe legislators need to be up front with the people and raise taxes to a level sufficient to take care of not only the problems occurring today, with an insufficiently funded administration, but also those problems which will continue next year and the following year. They concur with the objections raised by the Montana Trial Lawyers. Section 19 makes a change that Mr. Judge does not believe is good. This change suggests that rather than the Department having the authority to reduce or suspend compensation of the claimants who persist in unsanitary, injurious practices, etc., we are going to let the insurers make that decision. The current statute really provides that the burden of proof on either suspending or reducing payments falls upon the insurer, who must provide good evidence to the Department that there is justification for reducing those benefits. Now what this bill will set in motion is to require the employees to defend themselves after the decision has already been made. They believe this is just plain mean-spirited and there should be no place in the bill for this. When they asked the Department about this, the Department indicated there were very few cases of this. Mr. Judge stated the statute is not broken now and does not need to be fixed. He believes there is opportunity for great mischief in this, not one agency will be making the decision, a myriad of insurers who practice and play in the Workers' Compensation

system in the State of Montana will be able to pick and choose when they make decisions. The burden for defense falls upon injured workers who can't pay attorneys because the system pays so poorly and fails to protect their interests. In the 'subsequent section' on page 20, confidentiality must be practiced. Confidentiality in terms of the public employees must be defined. If this legislation passes, it should be fixed first.

***{Tape : 1; Side : B; Approx. Time Counter : 55 - 60}***

**Questions from Committee Members and Responses:**

**Sen. Sue Bartlett** asked **John Wieda, Bureau Chief, Department of Labor and Industry, Employment Relations Division**, why the insured should be able to reduce or suspend rather than the Department and why that was proposed in the bill.

**John Wieda, Employment Relations Division**, responded that they raised the issue on that particular statute because they believed there was enough 'tricky' parts in it and it needed some clarification. Their concern was that the statute is vague regarding what would be an unsanitary or injurious practice. If an insurer came to them to ask them to invoke this statute, they would have no evidence but what was first given to them. They have no way of investigating nor any way of making an objective assessment and whether or not what had been given to them was appropriate. In such a case, then, they would have to make a determination without any of their own information, which they felt was not a wise thing to do. By placing the situation as stated in the bill, the benefits disputes are placed under the same resolution jurisdiction which the rest of the benefits disputes are in under Section 72. This simply means that a person would go to mediation. He said Mr. Judge indicated that would require them to have an attorney. It doesn't require this, they can go through the mediation process without an attorney. This is not a huge issue with them, but they believe there is a trap in there in that the Department could get caught in the middle of a major dispute resolution over what right the Employment Relations Division has to invoke this statute. This is why it was raised for concern.

**Closing by Sponsor:**

**Sen. Thomas** closed by stating there are touchy issues with the Labor Department and insurance companies, this is why so many



amendments were added after the bill was drafted. He said if we don't adjust the formula, some General Fund money will have to make up the difference. He asks for support of this legislation.

***{Tape : 1; Side : B; Approx. Time Counter : 61 - 67}***

**HEARING ON SB 118**

**Sponsor:** SEN. FRED THOMAS, SD 30, Stevensville

***(Please note: SB 118 is a companion bill to SB 117, also, all the proponents on SB 117 have indicated they are also proponents on SB 118)***

**Opponents:** None.

**Opening Statement by Sponsor:**

SEN. FRED THOMAS, SD 30, Stevensville, introduced SB 118. He stated SB 118 will be submitted to the voters to request the final percentage that was adopted in SB 117. If it is set at 3 points in SB 117, this bill needs to be amended to correspond. **EXHIBIT(las10a07), EXHIBIT(las10a08)**

**Proponents' Testimony:**

Kevin Braun, Department of Labor & Industry, addressed the few limits in SB 118 to reflect change in percentage from 3.5 to 3.0 for the ballot issue, then to appropriately refer to Plan 1, as the insurer, other than the employer.

Jacqueline Lenmark, American Insurance Association, also supports this bill. She said the amendments they proposed with State Fund to SB 117 are identical.

Pat Haffey, Commissioner, Department of Labor & Industry, said they support SB 118.

George Wood, Executive Director, Montana Self-Insureds' Association, went on record as supporting SB 118.

**Questions From The Committee:** None.

**Closing by Sponsor:** Sen. Thomas said he closes SB 118.

*{Tape : 1; Side : B; Approx. Time Counter : 67 - 76}*

**HEARING ON SB 131**

**Sponsor:** SEN. CHARLES SWYSGOOD, SD 17, Dillon

**Proponents:** Charles Briggs, Community Services Advisory,  
Governor's Office  
George Dennison, Community Services Advisory,  
University of Montana  
Bill Cain, Community Services Advisory  
Bob Simoneau, Community Services Advisory  
Pat Haffey, Commissioner, Department of Labor &  
Industry

**Opponents:** None.

**Opening Statement by Sponsor:**

SEN. CHARLES SWYSGOOD, SD 17, Dillon, explained SB 131 revises the law relating to the Montana Community Service Act. First, it is a housekeeping bill, intended to bring the statute into conformity with some of the changes which have transpired in state government. Second, it makes a language of the state operation consistent with the federal perspective of state entities which oversee the Community Service Bureau and simply represents work changes to make the language more uniform. Community Services is located in the Governor's office and almost three years ago this service was attached to the Department of Labor and through the last biennium it was placed in the Job Service Division of the Department of Labor. Since July of 1997, it stands alone in the Department of Labor. Its budget and personnel are handled by the Centralized Service Division.

**Proponents' Testimony:**

Charles Briggs, Community Services Advisory, Governor's Office, stated the Montana Community Services Act was questioned by Governor Racicot in 1993 and approved by the Legislature. A number of things have changed since that date. One thing which has changed is what was referred to in the Act in its current language is "serve America", which has been changed to "the learn and serve grant" which is now service learning. Other things which have changed since then is "The Department of Fish, Wildlife, & Parks" is not the only agency which is involved in projects in conservation, we now have Department of Natural

Resources, the Department of Environmental Quality and other changes have been referenced. Also, this occurred by the Montana Legislature before Congress through the National Community Service Trust Act which promotes a partnership in the relationship between state government, particularly with governors in overseeing Community Service Operations. The federal legislation refers to a state commission appointed by the governor, which, in the context of the current act is the Community Service Advisory Council. Members of this council are available to make this clear.

**George Dennison, Community Services Advisory Council, Chairman, President of the University of Montana,** said he has chaired this council since it was created in 1993. The legislation is simply housekeeping which changes nothing related to the work of the Commission, but it will allow them to be more consistent with the way they interact with others.

**Bill Cain, Community Services Advisory Council,** represents private industry and encourages the support of SB 131.

**Bob Simoneau, Community Services Advisory Council, Vice Chairman,** spoke on behalf of the bill in support of it.

**Pat Haffey, Commissioner, Department of Labor & Industry,** said she was in the Governor's Office when Community Services was first established, and has reviewed the changes in this bill. She feels they are appropriate.

**Opponents' Testimony:** None.

**Questions from Committee Members and Responses:**

**SEN. VICKI COCCHIARELLA** asked **Charles Briggs** about page 4, line 8, where it states 'commission members are entitled to payment and reimbursement', if the commission members have been paid in the past or not, whether or not this is new and where the money comes from. **Mr. Briggs** responded this reimbursement has always come out of the federal-state cooperative agreement and those funds have been available for this use every since 1994.

**CHAIRMAN KEATING** asked for clarification regarding going from an advisory counsel to a commission, if that is why the pay

reimbursement is in there, also if the advisory council members are also reimbursed for their expenses. **George Dennison** responded the reimbursements for travel are always available. Some members of the council do not ask for reimbursement but provide matching funds, but it is always available.

**Closing by Sponsor:**

**SEN. SWYSGOOD** closed by restating this is basically a housekeeping bill. It adds more agencies to the list of those who can use the service. He said he had a personal experience of this service involving a flood. These people came in and cleaned up and did an excellent job. The people of his community were impressed by the mannerisms of this service. He asked for support of SB 131.

*{Tape : 1; Side : B; Approx. Time Counter : 77 - 78}*

**EXECUTIVE ACTION ON SB 21**

**Motion/Vote:** **SEN. THOMAS** moved that **SB 21 DO PASS**. Motion carried unanimously.

**EXECUTIVE ACTION ON SB 131**

**Motion/Vote:** **SEN. COCCHIARELLA** moved that **SB 131 DO PASS**. Motion carried unanimously.

**ADJOURNMENT**

Adjournment: 4:19 P.M.

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SEN. TOM KEATING, Chairman

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GILDA CLANCY, Secretary

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**EXHIBIT**(las10aad)